IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

OP.No. 7407 of 2003(F)

PETITIONER:

M/S. STELLA AGENCIES, ATHANI, ALUVA,
ERNAKULAM DISTRICT, REPRESENTED BY PAULY GEORGE,
MANAGING PARTNER.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON

RESPONDENTS:
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1. INTELLIGENCE OFFICER, SQUAD NO.1,
ERNAKULAM.

2. COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

3. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT TAXES DEPARTMENT,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP13089 OF 2003 IN OP 7407 OF 2003

DISMISSED

26.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF THE ORDER OF THE DEPUTY COMMISSIONER, MATTANCHERRY DATED 30.10.96

EXT.P2 COPY OF THE ORDER OF THE INTELLIGENCE OFFICER, SQUAD NO. I, DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM DATED 29.1.1999

EXT.P3 COPY OF THE ORDER OF THE FIRST RESPONDENT DATED 18.2.2000

EXT.P4 COPY OF THE ORDER OF THE DY. COMMISSIONER, MATTANCHERRY DATED 11.8.2000

EXT.P5 COPY OF THE ORDER OF THE SECOND RESPONDENT DATED 19.3.2002

EXT.P6 COPY OF THE CERTIFICATE ISSUED BY THE JAY BEE TRADERS, ALUVA.

EXT.P7 COPY OF THE CERTIFICATE ISSUED BY M/S. JANATHA TRADING CORPORATION, ALUVA.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 7407 OF 2003

Dated this the 26th day of November, 2007

JUDGMENT

Petitioner is challenging Ext.P5 whereunder the Commissioner has confirmed penalty of Rs. 45,000/- levied under Section 45A of the KGST Act for the year 1994-95. I heard counsel for the petitioner and Government Pleader and I have gone through the impugned orders. Petitioner is a firm which is a registered dealer under the KGST Act. During inspection, business transactions noted in the letter-head was seized, besides stock variation was found. Penalty originally levied was subject matter of revision and after one round of remand, original penalty of Rs. 45,000/- was increased to Rs. 3,33,616/-. In the second round remand, the same amount of penalty was confirmed. In revision against the revised order, Deputy Commissioner reduced the penalty to Rs. 45,000/-, which was confirmed by the commissioner, against which this O.P. is filed. The explanation offered by the petitioner is quite interesting, because, it is seen that while firm was doing business, parallel business was carried on by the Managing Partner in a

clandestine manner without taking registration. In fact petitioner's explanation was considered in detail by the Commissioner. However, the explanation was rejected because documents produced namely letters from customers and suppliers did not contain any relevant details, such as date of sale of goods, bill number, date of bill or even value of goods. Even if petitioner's case that supplies were made by others based on orders canvassed by the petitioner and petitioner received only commission is true, evidence is required such as sale bill, payment of tax by the suppliers, etc. In the absence of any of these documents, I do not think petitioner can claim exemption from penalty, more so when the transactions in the letter head are admitted by the petitioners as sales canvassed by the petitioner. Even though counsel for the petitioner referred to the Tribunal's order in TA No. 694 of 2003 dated 28.2.2004, remanding the assessment matter in appeal, I do not think Tribunal's order helps the petitioner to get out of penalty. O.P. is accordingly dismissed as devoid of any merit.

(C.N. RAMACHANDRAN NAIR)
Judge